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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION

CURT SIMPSON,

Plaintiff,

- vs -

FUGLI, LLC, and SINCLAIR OIL
CORPORATION, d/b/a SOUTHGATE
MARKET,

Defendants.

CASE No.:

COMPLAINT

Plaintiff, CURT SIMPSON (hereinafter the “Plaintiff”), through undersigned counsel, hereby files this Complaint and sues FUGLI, LLC, a Montana Limited Liability Company, and SINCLAIR OIL CORPORATION, a Wyoming Corporation, d/b/a SOUTHGATE MARKET (hereinafter, collectively the “Defendants”), for injunctive relief, attorney’s fees and costs (including, but not limited to, court costs and expert fees), pursuant to 42 U.S.C. §12181, et. seq., (“AMERICANS WITH DISABILITIES ACT” or “ADA”) and alleges:

JURISDICTION AND PARTIES

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2 1. This is an action for declaratory and injunctive relief pursuant to Title
3
4 III of the Americans with Disabilities Act, 42 U.S.C. §12181, et. seq., (hereinafter
5 referred to as the “ADA”). This Court is vested with jurisdiction under 28 U.S.C.
6 §1331 and §343.

7
8 2. Venue is proper in this Court, Missoula Division pursuant to 28
9 U.S.C. §1391(B) in that all events giving rise to this lawsuit occurred in Missoula
10 County, Montana.

11
12 3. At the time of Plaintiff’s visit to Defendants’ Subject Facilities, prior
13 to instituting the instant action, CURT SIMPSON (hereinafter referred to as
14 “SIMPSON”), was a resident of the State of Montana, has an amputation of the
15 right leg and as such suffers from what constitutes a “qualified disability” under
16 the Americans with Disabilities Act of 1990, and used a wheelchair for mobility.
17 He is required to traverse with a wheelchair and is substantially limited to
18 performing one or more major life activities including, but not limited to, walking,
19 standing, grabbing, tight grasping, and/or pinching or twisting of the wrist.
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23 4. The Plaintiff personally visited, on or about November 1, 2019
24 Defendants’ Subject Facilities, but was denied full and equal access to, and full and
25 equal enjoyment of, the facilities services, goods, privileges and accommodations
26 offered within Defendants’ Subject Facilities, which is the subject of this lawsuit,
27

1 even though he would be classified as a “bona fide patron”, because of his
2 disabilities. Plaintiff lives in Ravalli County, Montana, in close proximity to
3 Defendants, (within 15.9 miles) and travels in the surrounding areas near
4 Defendants’ Subject Facilities on a regular basis.
5

6 5. The Defendants, FUGLI, LLC, a Montana Limited Liability
7 Company, and SINCLAIR OIL CORPORATION, a Wyoming Corporation, d/b/a
8 SOUTHGATE MARKET are authorized to conduct and are conducting business
9 within the State of Montana.
10
11

12 6. Upon information and belief, SINCLAIR OIL CORPOARTION, a
13 Wyoming Corporation, is the lessee and/or operator of the real property (the
14 “Subject Facility”), and the owner of the improvements where the Subject Facility
15 is located which is the subject of this action, the establishment commonly referred
16 to as SOUTHGATE MARKET located at 1900 South Ave, in Missoula, Montana.
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19 7. Upon information and belief, FUGLI, LLC, a Montana Limited
20 Liability Company, is the lessor, operator and/or owner of the real property (the
21 “Subject Facility”), and the owner of the improvements where the Subject
22 Facilities are located which are the subjects of this action.
23

24 8. All events giving rise to this lawsuit occurred in the State of Montana.
25 Venue is proper in this Court as the premises are located in Missoula County in the
26 Montana District, Missoula Division.
27

COUNT I – VIOLATIONS OF THE AMERICANS WITH
DISABILITIES ACT

9. On or about July 26, 1990, Congress enacted the Americans with Disabilities Act (“ADA”), 42 U.S.C. §12101, et. seq. Commercial enterprises were provided one and a half years from enactment of the statute to implement its requirements. The effective date of the Title III of the ADA was January 26, 1992. 42 U.S.C. §12181; 20 C.F.R. §36.508(a).

10. Congress found, among other things, that:

- (i) some 43,000,000 Americans have one or more physical or mental disabilities, and this number shall increase as the population continues to grow older;
- (ii) historically, society has tended to isolate and segregate individuals with disabilities, and, despite some improvements, such forms of discrimination against disabled individuals continue to be a pervasive social problem, requiring serious attention;
- (iii) discrimination against disabled individuals persists in such critical areas as employment, housing, public accommodations, transportation, communication, recreation, institutionalization, health services, voting and access to public services and public facilities;
- (iv) individuals with disabilities continually suffer forms of discrimination, including outright intentional exclusion, the discriminatory effects of architectural, transportation, and communication barriers, failure to make modifications to existing facilities and practices. Exclusionary qualification standards and criteria,

1 segregation, and regulation to lesser services, programs,
2 benefits, or other opportunities; and,

- 3 (v) the continuing existence of unfair and unnecessary
4 discrimination and prejudice denies people with
5 disabilities the opportunity to compete on an equal basis
6 and to pursue those opportunities for which our country
7 is justifiably famous, and costs the United States billions
8 of dollars in unnecessary expenses resulting from
9 dependency and non-productivity.

42 U.S.C. §12101(a)(1)-(3), (5) and (9).

10 11. Congress explicitly stated that the purpose of the ADA was to:

- 11 (i) provide a clear and comprehensive national mandate for
12 the elimination of discrimination against individuals with
13 disabilities;
14 (ii) provide clear, strong, consistent, enforceable standards
15 addressing discrimination against individuals with
16 disabilities; and,
17 (iii) invoke the sweep of congressional authority, including
18 the power to enforce the fourteenth amendment and to
19 regulate commerce, in order to address the major areas of
20 discrimination faced day-to-day by people with
21 disabilities.

42 U.S.C. §12101(b)(1)(2), and (4).

21 12. Pursuant to 42 U.S.C. §12181(7) and 28 C.F.R. §36.104, Defendants
22 are places of public accommodation in that they are establishments which provide
23 goods and services to the public.
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1 13. Pursuant to 42 U.S.C. §12181(7) and 28 C.F.R. §36.104, the building
2 and/or Subject Facility which is the subject of this action is a public
3 accommodation covered by the ADA and which must be in compliance therewith.
4

5 14. The Plaintiff is informed and believes, and therefore alleges, that the
6 Subject Facility has begun operations and/or undergone remodeling, repairs and/or
7 alterations since January 26, 1990.
8

9 15. Defendants have discriminated, and continue to discriminate, against
10 the Plaintiff, and others who are similarly situated, by denying full and equal
11 access to, and full and equal enjoyment of, goods, services, facilities, privileges,
12 advantages and/or accommodations at Defendants' Subject Facilities in derogation
13 of 42 U.S.C. §12101, et. seq., and as prohibited by 42 U.S.C. §12182 et. seq., and
14 by failing to remove architectural barriers pursuant to 42 U.S.C.
15 §12182(b)(2)(a)(iv), where such removal is readily achievable.
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19 16. The Plaintiff has been unable to, and continues to be unable to, enjoy
20 full and equal safe access to, and the benefits of, all accommodations and services
21 offered at Defendants' Subject Facilities. Prior to the filing of this lawsuit, the
22 Plaintiff visited the subject properties and was denied full and safe access to all the
23 benefits, accommodations and services of the Defendants. Prior to the filing of this
24 lawsuit, SIMPSON, personally visited SOUTHGATE MARKET located at 1900
25 South Ave, located in Missoula, Montana with the intention of using Defendants'
26
27

1 facilities, but was denied full and safe access to the facilities, and therefore
2 suffered an injury in fact that is traceable to the Facilities actions. As stated herein,
3 the Plaintiff has visited the Subject Facilities in the past, prior to the filing of this
4 lawsuit, resides near said Subject Facility, and Plaintiff intends to return to the
5 Subject Facility and Property within six months, or sooner, upon the Subject
6 Facility being made accessible but is currently deterred from returning due to these
7 barriers. As such, Plaintiff is likely to be subjected to reencountering continuing
8 discrimination at the Subject Facility unless it is made readily accessible to and
9 usable by individuals with disabilities to the extent required under the ADA,
10 including the removal of the architectural barrier which remain at the Subject
11 Facility. The injury in fact can be redressed by a favorable decision by this Court.

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16 17. Pursuant to the mandates of 42 U.S.C. §12134(a), on July 26, 1991,
17 the Department of Justice, Office of the Attorney General, promulgated Federal
18 Regulations to implement the requirements of the ADA, known as the Americans
19 with Disabilities Act Accessibility Guidelines (hereinafter “ADAAG”), 28 C.F.R.
20 Part 36, under which said Department may obtain civil penalties of up to \$110,000
21 for the first violation and \$150,000 for any subsequent violation.
22

23
24 18. The Defendants’ Subject Facilities are in violation of 42 U.S.C.
25 §12182 et. seq., the ADA and 28 C.F.R. §36.302 et. seq., and is discriminating
26 against the Plaintiff, as a result of interalia, the following specific violations:
27

VIOLATIONS

a) Failure to provide ADA compliant number of accessible parking stalls throughout the subject property, in violation of 2010 ADAS and 2015 ABAAS Section 208.2. This barrier failed to have any van accessible parking stalls to allow Plaintiff van accessible parking which Plaintiff requires as Plaintiff utilizes a wheelchair due to the Plaintiff's disability and such handicapped accessible parking stalls are necessary. Said barrier is covered by the A.D.A. guidelines and is in nonconformity with the requirements for such architecture.

b) Failure to provide ADA compliant access aisle at an accessible parking stall, in violation of 2010 ADAS and 2015 ABAAS Section 502.2. This barrier interfered with the Plaintiff's full and equal enjoyment of the facility by failing to have a compliant Access Isle connected to a van accessible parking stall to allow Plaintiff wheelchair access to the facility after exiting his vehicle which Plaintiff requires as Plaintiff utilizes a wheelchair due to the Plaintiff's disability. Said barrier is covered by the A.D.A. guidelines and is in nonconformity with the requirements for such architecture.

c) Failure to provide ADA compliant parking stall signage, in violation of 2010 ADAS and 2015 ABAAS Section 502.6. This barrier interfered with the Plaintiff's full and equal enjoyment of the facility by failing to have a compliant handicapped parking space identification sign properly displayed and mounted. Plaintiff failed to observe proper handicapped parking space identification signs for required handicapped parking areas at Defendant's establishment and Plaintiff requires handicapped wheelchair access parking to the facility as Plaintiff utilizes a wheelchair due to the Plaintiff's disability. Said barrier is covered by the A.D.A. guidelines and is in nonconformity with the requirements for such architecture.

d) Failure to provide ADA compliant parking stall slope grading, in violation of 2010 ADAS and 2015 ABAAS Section 502.4. This barrier interfered with the Plaintiff's full and equal enjoyment of the facility by failing to have a compliant wheelchair ramp with appropriate slope grading. Plaintiff utilized a wheelchair in an attempt to enter Defendant's premises and encountered a noncompliant wheelchair ramp with a non complaint slope grade for wheelchair access that non-handicapped patrons could access without barrier. Said barrier is covered by the A.D.A. guidelines and is in nonconformity with the requirements for such architecture.

1 e) Failure to provide ADA compliant ramp slope grading, in violation of
2 2010 ADAS and 2015 ABAAS Section 406.1. This barrier failed to have a
3 compliant wheelchair accessible ramp slope grading leading to the building
4 accessible entrance. Plaintiff utilized a wheelchair due to the Plaintiff's
5 disability in an attempt to enter Defendant's premises from the parking lot
6 and encountered this barrier that others without disability did not encounter.
Said barrier is covered by the A.D.A. guidelines and is in nonconformity
with the requirements for such architecture.

7 f) Failure to provide ADA compliant curb ramp flare slope grading, in
8 violation of 2010 ADAS and 2015 ABAAS Section 406.1 and 406.3. This
9 barrier failed to have a compliant wheelchair ramp flare with appropriate
10 slope grading. Plaintiff utilized a wheelchair due to the Plaintiff's disability
11 in an attempt to enter Defendant's premises from the parking lot and
12 encountered a noncompliant and/or nonexistent wheelchair ramp flare with a
13 non complaint slope grade for wheelchair access. Said barrier is covered by
the A.D.A. guidelines and is in nonconformity with the requirements for
such architecture.

14 g) Failure to provide ADA compliant walkway, in violation of 2010 ADAS
15 and 2015 ABAAS Section 303.2 and 303.3. This barrier failed to have a
16 compliant wheelchair route with exterior route walkway for a wheelchair
17 accessible route. Plaintiff utilized a wheelchair due to the Plaintiff's
18 disability in an attempt to enter Defendant's premises and encountered a
19 noncompliant exterior route walkway for wheelchair access that non-
handicapped patrons could access without barrier. Said barrier is covered by
the A.D.A. guidelines and is in nonconformity with the requirements for
such architecture.

20 h) Failure to provide ADA compliant walkway minimum width clearance, in
21 violation of 2010 ADAS and 2015 ABAAS Section 403.5.1. This barrier
22 failed to have a compliant wheelchair route with walkway minimum width
23 clearance for a wheelchair accessible route. Plaintiff utilized a wheelchair
24 due to the Plaintiff's disability in an attempt to enter Defendant's premises
25 and encountered a noncompliant walkway minimum width clearance for
26 wheelchair access that non-handicapped patrons could access without
27 barrier. Said barrier is covered by the A.D.A. guidelines and is in
nonconformity with the requirements for such architecture.

1 i) Failure to provide ADA compliant secured floor mats (interior and
2 exterior) throughout the subject facility, in violation of 2010 ADAS and
3 2015 ABAAS Section 302.2. Plaintiff encountered non-complaint secured
4 floor mats by which he had difficulty negotiating from his wheelchair which
5 was a barrier that non-handicapped patrons did not have. Said barrier is
6 covered by the A.D.A. guidelines and is in nonconformity with the
7 requirements for such architecture.

8 j) Failure to provide ADA compliant transaction counters height, in violation
9 of 2010 ADAS and 2015 ABAAS Section 904.4.1 and 904.4.2. This barrier
10 failed to have compliant transaction counters height with wheelchair access.
11 Plaintiff utilized a wheelchair due to the Plaintiff's disability in an attempt to
12 enter Defendant's premises and encountered noncompliant transaction
13 counters height with wheelchair access that non-handicapped patrons could
14 access without barrier. Said barrier is covered by the A.D.A. guidelines and
15 is in nonconformity with the requirements for such architecture.

16 k) Failure to provide ADA compliant self-serve dispenser height, at several
17 self-serve dispenser areas throughout the subject facility, in violation of
18 2010 ADAS and 2015 ABAAS Section 308.1. This barrier failed to have
19 accessible self-serve dispensers at accessible wheelchair height that did not
20 allow him adequate reach ranges for equal access to self-service items while
21 in his wheelchair that non-handicapped patrons could access without barrier.
22 Said barrier is covered by the A.D.A. guidelines and is in nonconformity
23 with the requirements for such architecture.

24 l) Failure to provide ADA compliant self-serve dispensers height, in
25 violation of 2010 ADAS and 2015 ABAAS Section 308.1. This barrier
26 failed to have compliant self-serve dispensers height accessible by
27 wheelchair that non-handicapped patrons could access without barrier. Said
28 barrier is covered by the A.D.A. guidelines and is in nonconformity with the
29 requirements for such architecture.

30 m) Failure to provide ADA compliant point of sale, merchandise and display
31 reach ranges, throughout the subject facility, in violation of 2010 ADAS and
32 2015 ABAAS Section 308.1. This barrier failed to have point of sale,
33 merchandise and display reach ranges, accessible by wheelchair that non-
34 handicapped patrons could access without barrier. Said barrier is covered
35 by the A.D.A. guidelines and is in nonconformity with the requirements for
36 such architecture.

1 n) Failure to provide ADA compliant restroom directional and informational
2 signage, in violation of 2010 ADAS and 2015 ABAAS Section 216.8. This
3 barrier failed to have compliant restroom directional and informational
4 signage for wheelchair access. Plaintiff utilized a wheelchair due to the
5 Plaintiff's disability in an attempt to enter Defendant's premises and
6 encountered noncompliant restroom directional and informational signage
7 for wheelchair access that non-handicapped patrons could access without
8 barrier. Said barrier is covered by the A.D.A. guidelines and is in
9 nonconformity with the requirements for such architecture.

10 o) Failure to provide ADA compliant unobstructed route leading to the
11 restroom, in violation of 2010 ADAS and 2015 ABAAS Section 403.5.1.
12 This barrier failed to have compliant unobstructed wheelchair access leading
13 to the restroom. Plaintiff utilized a wheelchair to access Defendant's
14 restroom and was faced with an obstructed route leading to the restroom.
15 Said barrier is covered by the A.D.A. guidelines and is in nonconformity
16 with the requirements for such architecture.

17 p) Failure to provide ADA compliant restroom signage, in violation of 2010
18 ADAS and 2015 ABAAS Section 216.2. This barrier failed to have
19 compliant restroom signage for wheelchair access. Plaintiff utilized a
20 wheelchair due to the Plaintiff's disability in an attempt to enter Defendant's
21 premises and encountered noncompliant restroom signage for wheelchair
22 access that non-handicapped patrons could access without barrier. Said
23 barrier is covered by the A.D.A. guidelines and is in nonconformity with the
24 requirements for such architecture.

25 q) Failure to provide ADA compliant restroom door width clearance, in
26 violation of 2010 ADAS and 2015 ABAAS Section 404.2.3. This barrier
27 failed to have compliant door width clearance accessible by wheelchair.
Plaintiff utilized a wheelchair due to the Plaintiff's disability in an attempt to
enter Defendant's premises and encountered noncompliant restroom door
width clearance for wheelchair access that non-handicapped patrons could
access without barrier. Said barrier is covered by the A.D.A. guidelines and
is in nonconformity with the requirements for such architecture.

r) Failure to provide ADA compliant paper towel dispenser height, in
violation of 2010 ADAS and 2015 ABAAS Section 308.2.1. This barrier
failed to have compliant paper towel dispenser height accessible by
wheelchair. Plaintiff utilized a wheelchair due to the Plaintiff's disability in

1 an attempt to enter Defendant's premises and encountered noncompliant
2 paper towel dispenser height for wheelchair access that non-handicapped
3 patrons could access without barrier. Said barrier is covered by the A.D.A.
4 guidelines and is in nonconformity with the requirements for such
architecture.

5 s) Failure to provide ADA compliant lavatory underside clearance, in
6 violation of 2010 ADAS and 2015 ABAAS Section 606.2. This barrier
7 failed to have compliant lavatory underside clearance accessible by
8 wheelchair. Plaintiff utilized a wheelchair due to the Plaintiff's disability in
9 an attempt to enter Defendant's restroom and encountered noncompliant
10 lavatory underside clearance for wheelchair access that non-handicapped
11 patrons could access without barrier. Said barrier is covered by the A.D.A.
guidelines and is in nonconformity with the requirements for such
architecture.

12 t) Failure to provide ADA compliant mirror height, in violation of 2010
13 ADAS and 2015 ABAAS Section 603.3. This barrier failed to have
14 compliant mirror height accessible by wheelchair. Plaintiff utilized a
15 wheelchair due to the Plaintiff's disability in an attempt to enter Defendant's
16 premises and encountered noncompliant mirror height for wheelchair access
17 that non-handicapped patrons could access without barrier. Said barrier is
covered by the A.D.A. guidelines and is in nonconformity with the
requirements for such architecture.

18 u) Failure to provide ADA compliant paper towel dispenser reach range, in
19 violation of 2010 ADAS and 2015 ABAAS Section 308.2.1. This barrier
20 failed to have compliant paper towel dispenser reach range accessible by
21 wheelchair. Plaintiff utilized a wheelchair due to the Plaintiff's disability in
22 an attempt to enter Defendant's premises and encountered noncompliant
23 paper towel dispenser reach range for wheelchair access that non-
24 handicapped patrons could access without barrier. Said barrier is covered by
the A.D.A. guidelines and is in nonconformity with the requirements for
such architecture.

25 v) Failure to provide ADA compliant paper towel dispenser clear floor
26 space, in violation of 2010 ADAS and 2015 ABAAS Section 308.2.2. This
27 barrier failed to have compliant paper towel dispenser clear floor space
accessible by wheelchair. Plaintiff utilized a wheelchair due to the Plaintiff's
disability in an attempt to enter Defendant's premises and encountered

1 noncompliant paper towel dispenser clear floor space for wheelchair access
2 that non-handicapped patrons could access without barrier. Said barrier is
3 covered by the A.D.A. guidelines and is in nonconformity with the
4 requirements for such architecture.

5 w) Failure to provide ADA compliant lavatory clear floor space, in violation
6 of 2010 ADAS and 2015 ABAAS Section 604.3.2. This barrier failed to
7 have compliant lavatory clear floor space accessible by wheelchair. Plaintiff
8 utilized a wheelchair due to the Plaintiff's disability in an attempt to enter
9 Defendant's premises and encountered noncompliant lavatory clear floor
10 space for wheelchair access that non-handicapped patrons could access
11 without barrier. Said barrier is covered by the A.D.A. guidelines and is in
12 nonconformity with the requirements for such architecture.

13 x) Failure to provide ADA compliant flushing mechanism location, in
14 violation of 2010 ADAS and 2015 ABAAS Section 604.6. This barrier
15 failed to have compliant flushing mechanism location accessible by
16 wheelchair. Plaintiff utilized a wheelchair due to the Plaintiff's disability in
17 an attempt to enter Defendant's premises and encountered noncompliant
18 flushing mechanism location for wheelchair access that non-handicapped
19 patrons could access without barrier. Said barrier is covered by the A.D.A.
20 guidelines and is in nonconformity with the requirements for such
21 architecture.

22 y) Failure to provide ADA compliant rear grab bar, in violation of 2010
23 ADAS and 2015 ABAAS Section 609.4. This barrier failed to have
24 compliant rear grab bar accessible by wheelchair. Plaintiff utilized a
25 wheelchair due to the Plaintiff's disability in an attempt to enter Defendant's
26 premises and encountered noncompliant rear grab bar wheelchair access that
27 non-handicapped patrons could access without barrier. Said barrier is
covered by the A.D.A. guidelines and is in nonconformity with the
requirements for such architecture.

z) Failure to provide ADA compliant side grab bar, in violation of 2010
ADAS and 2015 ABAAS Section 609.4. This barrier failed to have
compliant side grab bar accessible by wheelchair. Plaintiff utilized a
wheelchair due to the Plaintiff's disability in an attempt to enter Defendant's
premises and encountered noncompliant side grab bar for wheelchair access
that non-handicapped patrons could access without barrier. Said barrier is
covered by the A.D.A. guidelines and is in nonconformity with the
requirements for such architecture.

1 aa) Failure to provide ADA compliant toilet centerline range, in violation of
2 2010 ADAS and 2015 ABAAS Section 604.2. This barrier failed to have
3 compliant toilet centerline range accessible by wheelchair. Plaintiff utilized
4 a wheelchair due to the Plaintiff's disability in an attempt to enter
5 Defendant's premises and encountered noncompliant toilet centerline range
6 for wheelchair access that non-handicapped patrons could access without
7 barrier. Said barrier is covered by the A.D.A. guidelines and is in
8 nonconformity with the requirements for such architecture.

9 bb) Failure to provide ADA compliant clear floor space between lavatory
10 and toilet, in violation of 2010 ADAS and 2015 ABAAS Section 604.3.2.
11 This barrier failed to have compliant clear floor space between lavatory and
12 toilet accessible by wheelchair. Plaintiff utilized a wheelchair due to the
13 Plaintiff's disability in an attempt to enter Defendant's premises and
14 encountered noncompliant clear floor space between lavatory and toilet for
15 wheelchair access that non-handicapped patrons could access without
16 barrier. Said barrier is covered by the A.D.A. guidelines and is in
17 nonconformity with the requirements for such architecture.

18 cc) Failure to provide ADA compliant toilet paper dispenser reach range, in
19 violation of 2010 ADAS and 2015 ABAAS Section 604.7. This barrier
20 failed to have compliant toilet paper dispenser reach range accessible by
21 wheelchair. Plaintiff utilized a wheelchair due to the Plaintiff's disability in
22 an attempt to enter Defendant's premises and encountered noncompliant
23 toilet paper dispenser reach range for wheelchair access that non-
24 handicapped patrons could access without barrier. Said barrier is covered by
25 the A.D.A. guidelines and is in nonconformity with the requirements for
26 such architecture.

27 dd) Failure to provide ADA compliant restroom clear floor space, in
violation of 2010 ADAS and 2015 ABAAS Section 603.2.1. This barrier
failed to have compliant restroom clear floor space accessible by wheelchair.
Plaintiff utilized a wheelchair due to the Plaintiff's disability in an attempt to
enter Defendant's premises and encountered noncompliant restroom clear
floor space for wheelchair access that non-handicapped patrons could access
without barrier. Said barrier is covered by the A.D.A. guidelines and is in
nonconformity with the requirements for such architecture.

19. The above-referenced barriers will likely cause a repeated real injury in
fact in a similar way as listed if not remedied when the Plaintiff frequents this

1 property again as described previously. Each of these barriers interfered with the
2 Plaintiff's full and equal enjoyment of the facility by failing to allow Plaintiff the
3 same access due to the Plaintiff's disability as those enjoy without disabilities.
4

5 20. Upon information and belief, there are other current violations of the
6 ADA at Defendants' Properties, and only once a full inspection is done can all said
7 violations be identified due to Plaintiff being deterred from discovering each and
8 every barrier as a result of encountering the above-listed violations.
9

10 21. To date, the readily achievable barriers and other violations of the
11 ADA still exist and have not been remedied or altered in such a way as to
12 effectuate compliance with the provisions of the ADA. The barriers to access at
13 the Subject Facilities, as described above, have severely diminished Plaintiff's
14 ability to avail himself of the goods and services offered at the Subject Facilities,
15 and compromise his safety.
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19 22. Pursuant to the ADA, 42 U.S.C. §12101 et. seq., and 28 C.F.R.
20 §36.304, the Defendants were required to make the Subject Facility, a place of
21 public accommodation, accessible to persons with disabilities since January 28,
22 1992. To date, the Defendants have failed to comply with this mandate.
23

24 23. The Plaintiff has been obligated to retain the undersigned counsel for
25 the filing and prosecution of this action. The Plaintiff is entitled to have his
26
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1 reasonable attorney's fees, costs and expenses paid by the Defendants, pursuant to
2 42 U.S.C. §12205.
3

4 24. Pursuant to 42 U.S.C. §12188, this Court is vested with the authority
5 to grant the Plaintiff's injunctive relief; including an order to alter the subject
6 facilities to make them readily accessible to, and useable by, individuals with
7 disabilities to the extent required by the ADA and closing the subject facility until
8 the requisite modifications are completed.
9

10 25. The Plaintiff has standing for injunctive relief as to any other barriers
11 at the Subject Facility related to his disability even if Plaintiff is not deterred from
12 returning to the public accommodation at issue pursuant to *Chapman v. Pier 1*
13 *Imports (U.S.) Inc.*, 631 F.3d 939 (9th Cir. 2011).
14
15

16 WHEREFORE, the Plaintiff hereby demands judgment against the
17 Defendants and the Court declare that the subject property and Subject Facilities
18 owned, operated, leased, controlled and/or administered by the Defendants are
19 violative of the ADA;
20

21 A. The Court enter an Order requiring the Defendants to alter their
22 facilities and amenities to make them accessible to and usable by
23 individuals with disabilities to the full extent required by Title III of
24 the ADA;
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- 1 B. The Court enter an Order directing the Defendants to evaluate and
2 neutralize their policies, practices and procedures toward persons with
3 disabilities, for such reasonable time so as to allow the Defendants to
4 undertake and complete corrective procedures to the Subject Facility;
5
6 C. The Court award reasonable attorney's fees, all costs (including, but
7 not limited to court costs and expert fees) and other expenses of suit,
8 to the Plaintiff; and
9
10 D. The Court award such other and further relief as it deems necessary,
11 just and proper.
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15 Dated: This 23rd day of December 2019.
16

17 By: /s/ M. William Judnich
18 M. William Judnich
19 Attorney for Plaintiff
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